

AMENDED IN ASSEMBLY APRIL 13, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 891

Introduced by Assembly Member DeVore

February 18, 2005

An act to ~~amend Section 82048.4 of, and to add Section 84203.4 to, Sections 82015 and 84219 of the Government Code, relating to the Political Reform Act of 1974.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 891, as amended, DeVore. Political Reform Act of 1974: slate mailer organizations.

Existing law defines *the terms* “slate mailer organization” and “~~committees~~” “*contribution*” for purposes of the Political Reform Act of 1974. ~~The act provides for 3 basic types of committees: those receiving contributions totaling \$1,000 or more in a calendar year, those making independent expenditures totaling \$1,000 or more in a calendar year, and those making contributions totaling \$10,000 or more in a calendar year to or at the behest of candidates or committees. The act provides, however, that the production and distribution of slate mailers by a slate mailer organization shall not be considered to be making a contribution or expenditure for purposes of determining if the slate mailer organization is a committee.~~

~~This bill would provide that the production and distribution of slate mailers by a slate mailer organization shall be considered a contribution, for purposes of a receiving committee’s duties only, to the extent that the value to a candidate benefiting from the slate mailer exceeds the payment received from that candidate’s controlled committees. This bill would require a slate mailer organization to inform a committee receiving a contribution of this type of the value~~

~~of that contribution within 24 hours of the distribution of the slate mailer, and would require the commission to adopt regulations providing an algorithm for determining that value.~~

This bill would provide that a payment made at the behest of a candidate or committee for the production or mailing of a slate mailer is a contribution to that candidate or committee unless full and adequate consideration is received from the candidate or committee. This bill would state that this provision is declaratory of existing law.

The act requires candidates to file periodic campaign reports disclosing contributions received, among other things. It additionally specifies the information to be included in the campaign report for a slate mailer organization.

This bill would require the campaign statement of a slate mailer organization to include for each candidate, committee, or other person that is a source of receipts totaling \$100 or more during the period covered by the campaign statement, or for any other candidate or ballot measure that was supported or opposed in a slate mailer, an estimate of the costs of that candidate's or measure's appearance in slate mailers sent by the slate mailer organization, as specified.

Existing law makes a violation of the act subject to administrative, civil, and criminal penalties.

This bill would impose a state-mandated local program by imposing potential criminal penalties on persons who violate the provisions in ~~additional disclosure requirements imposed by this bill. It would also impose a state-mandated local program by making more candidates qualify for committee filing obligations under the act that are administered in some cases by local officials.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.~~

~~With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.

Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The Political Reform Act of 1974, an initiative measure, provides that the Legislature may amend the act to further the act's purposes with a $\frac{2}{3}$ vote of each house and compliance with specified procedural requirements.

This bill, which would declare that it furthers the purposes of the act, would therefore require a $\frac{2}{3}$ vote.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 82048.4 of the Government Code is~~
2 ~~amended to read:~~
3 SECTION 1. Section 82015 of the Government Code is
4 amended to read:
5 82015. (a) "Contribution" means a payment, a forgiveness of
6 a loan, a payment of a loan by a third party, or an enforceable
7 promise to make a payment except to the extent that full and
8 adequate consideration is received, unless it is clear from the
9 surrounding circumstances that it is not made for political
10 purposes.
11 (b) (1) A payment made at the behest of a committee as
12 defined in subdivision (a) of Section 82013 is a contribution to
13 the committee unless full and adequate consideration is received
14 from the committee for making the payment.
15 (2) A payment made at the behest of a candidate is a
16 contribution to the candidate unless the criteria in either
17 subparagraph (A) or (B) are satisfied:
18 (A) Full and adequate consideration is received from the
19 candidate.
20 (B) It is clear from the surrounding circumstances that the
21 payment was made for purposes unrelated to his or her candidacy
22 for elective office. The following types of payments are
23 presumed to be for purposes unrelated to a candidate's candidacy
24 for elective office:

1 (i) A payment made principally for personal purposes, in
2 which case it may be considered a gift under the provisions of
3 Section 82028. Payments that are otherwise subject to the limits
4 of Section 86203 are presumed to be principally for personal
5 purposes.

6 (ii) A payment made by a state, local, or federal governmental
7 agency or by a nonprofit organization that is exempt from
8 taxation under Section 501(c)(3) of the Internal Revenue Code.

9 (iii) A payment not covered by clause (i), made principally for
10 legislative, governmental, or charitable purposes, in which case it
11 is neither a gift nor a contribution. However, payments of this
12 type that are made at the behest of a candidate who is an elected
13 officer shall be reported within 30 days following the date on
14 which the payment or payments equal or exceed five thousand
15 dollars (\$5,000) in the aggregate from the same source in the
16 same calendar year in which they are made. The report shall be
17 filed by the elected officer with the elected officer's agency and
18 shall be a public record subject to inspection and copying
19 pursuant to the provisions of subdivision (a) of Section 81008.
20 The report shall contain the following information: name of
21 payor, address of payor, amount of the payment, date or dates the
22 payment or payments were made, the name and address of the
23 payee, a brief description of the goods or services provided or
24 purchased, if any, and a description of the specific purpose or
25 event for which the payment or payments were made. Once the
26 five thousand dollars (\$5,000) aggregate threshold from a single
27 source has been reached for a calendar year, all payments for the
28 calendar year made by that source must be disclosed within 30
29 days after the date the threshold was reached or the payment was
30 made, whichever occurs later. Within 30 days after receipt of the
31 report, state agencies shall forward a copy of these reports to the
32 Fair Political Practices Commission, and local agencies shall
33 forward a copy of these reports to the officer with whom elected
34 officers of that agency file their campaign statements.

35 (C) For purposes of subparagraph (B), a payment is made for
36 purposes related to a candidate's candidacy for elective office if
37 all or a portion of the payment is used for election-related
38 activities. For purposes of this subparagraph, "election-related
39 activities" shall include, but are not limited to, the following:

1 (i) Communications that contain express advocacy of the
2 nomination or election of the candidate or the defeat of his or her
3 opponent.

4 (ii) Communications that contain reference to the candidate's
5 candidacy for elective office, the candidate's election campaign,
6 or the candidate's or his or her opponent's qualifications for
7 elective office.

8 (iii) Solicitation of contributions to the candidate or to third
9 persons for use in support of the candidate or in opposition to his
10 or her opponent.

11 (iv) Arranging, coordinating, developing, writing, distributing,
12 preparing, or planning of any communication or activity
13 described in clauses (i), (ii), or (iii), above.

14 (v) Recruiting or coordinating campaign activities of
15 campaign volunteers on behalf of the candidate.

16 (vi) Preparing campaign budgets.

17 (vii) Preparing campaign finance disclosure statements.

18 (viii) Communications directed to voters or potential voters as
19 part of activities encouraging or assisting persons to vote if the
20 communication contains express advocacy of the nomination or
21 election of the candidate or the defeat of his or her opponent.

22 (D) A contribution made at the behest of a candidate for a
23 different candidate or to a committee not controlled by the
24 behesting candidate is not a contribution to the behesting
25 candidate.

26 *(3) A payment made at the behest of a candidate or committee*
27 *for the production or mailing of a slate mailer is a contribution*
28 *to that candidate or committee unless full and adequate*
29 *consideration is received from the candidate or committee.*

30 (c) The term "contribution" includes the purchase of tickets
31 for events such as dinners, luncheons, rallies, and similar
32 fundraising events; the candidate's own money or property used
33 on behalf of his or her candidacy other than personal funds of the
34 candidate used to pay either a filing fee for a declaration of
35 candidacy or a candidate statement prepared pursuant to Section
36 13307 of the Elections Code; the granting of discounts or rebates
37 not extended to the public generally or the granting of discounts
38 or rebates by television and radio stations and newspapers not
39 extended on an equal basis to all candidates for the same office;
40 the payment of compensation by any person for the personal

1 services or expenses of any other person if the services are
2 rendered or expenses incurred on behalf of a candidate or
3 committee without payment of full and adequate consideration.

4 (d) The term “contribution” further includes any transfer of
5 anything of value received by a committee from another
6 committee, unless full and adequate consideration is received.

7 (e) The term “contribution” does not include amounts received
8 pursuant to an enforceable promise to the extent those amounts
9 have been previously reported as a contribution. However, the
10 fact that those amounts have been received shall be indicated in
11 the appropriate campaign statement.

12 (f) The term “contribution” does not include a payment made
13 by an occupant of a home or office for costs related to any
14 meeting or fundraising event held in the occupant’s home or
15 office if the costs for the meeting or fundraising event are five
16 hundred dollars (\$500) or less.

17 (g) Notwithstanding the foregoing definition of “contribution,”
18 the term does not include volunteer personal services or
19 payments made by any individual for his or her own travel
20 expenses if the payments are made voluntarily without any
21 understanding or agreement that they shall be, directly or
22 indirectly, repaid to him or her.

23 *SEC. 2. Section 84219 of the Government Code is amended to*
24 *read:*

25 84219. Whenever a slate mailer organization is required to
26 file campaign reports pursuant to Section 84218, the campaign
27 report shall include the following information:

28 (a) The total amount of receipts during the period covered by
29 the campaign statement and the total cumulative amount of
30 receipts. For purposes of this section only, “receipts” means
31 payments received by a slate mailer organization for production
32 and distribution of slate mailers.

33 (b) The total amount of disbursements made during the period
34 covered by the campaign statement and the total cumulative
35 amount of disbursements. For purposes of this section only,
36 “disbursements” means payment made by a slate mailer
37 organization for the production or distribution of slate mailers.

38 (c) For each candidate or committee that is a source of receipts
39 totaling one hundred dollars (\$100) or more during the period
40 covered by the campaign statement:

1 (1) The name of the candidate or committee, identification of
2 the jurisdiction and the office sought or ballot measure number or
3 letter, and if the source is a committee, the committee's
4 identification number, street address, and the name of the
5 candidate or measure on whose behalf or in opposition to which
6 the payment is made.

7 (2) The date and amount received for each receipt totaling one
8 hundred dollars (\$100) or more during the period covered by the
9 campaign statement.

10 (3) The cumulative amount of receipts on behalf of or in
11 opposition to the candidate or measure.

12 (4) *An estimate of the costs of that candidate's or measure's*
13 *appearance in slate mailers sent by the slate mailer organization*
14 *during the period covered by the report, determined in*
15 *accordance with an algorithm specified by the commission. For*
16 *each slate mailer, that algorithm shall account for the costs of*
17 *production and mailing, for the percentage of the space for*
18 *political communications devoted to the candidate or measure,*
19 *and for any other items the commission deems will assist in*
20 *estimating the costs of the slate mailer attributable to the*
21 *appearance of the candidate or measure in the slate mailer.*

22 (d) For each person other than a candidate or committee who
23 is a source of receipts totaling one hundred dollars (\$100) or
24 more during the period covered by the campaign statement:

25 (1) Identification of the jurisdiction, office or ballot measure,
26 and name of the candidate or measure on whose behalf or in
27 opposition to which the payment was made.

28 (2) Full name, street address, name of employer, or, if
29 self-employed, name of business of the source of receipts.

30 (3) The date and amount received for each receipt totaling one
31 hundred dollars (\$100) or more during the period covered by the
32 campaign statement.

33 (4) The cumulative amount of receipts on behalf of or in
34 opposition to the candidate or measure.

35 (5) *An estimate of the costs of that candidate's or measure's*
36 *appearance in slate mailers sent by the slate mailer organization*
37 *during the period covered by the report, determined in*
38 *accordance with an algorithm specified by the commission. For*
39 *each slate mailer, that algorithm shall account for the costs of*
40 *production and mailing, for the percentage of the space for*

1 *political communications devoted to the candidate or measure,*
2 *and for any other items the commission deems will assist in*
3 *estimating the costs of the slate mailer attributable to the*
4 *appearance of the candidate or measure in the slate mailer.*

5 (e) For each candidate or ballot measure not reported pursuant
6 to subdivision (c) or (d), but who was supported or opposed in a
7 slate mailer sent by the slate mailer organization during the
8 period covered by the report, ~~identification~~:

9 (1) *Identification* of jurisdiction, office or ballot measure, and
10 name of the candidate or measure who was supported or
11 opposed.

12 (2) *An estimate of the costs of that candidate's or measure's*
13 *appearance in slate mailers sent by the slate mailer organization*
14 *during the period covered by the report, determined in*
15 *accordance with an algorithm specified by the commission. For*
16 *each slate mailer, that algorithm shall account for the costs of*
17 *production and mailing, for the percentage of the space for*
18 *political communications devoted to the candidate or measure,*
19 *and for any other items the commission deems will assist in*
20 *estimating the costs of the slate mailer attributable to the*
21 *appearance of the candidate or measure in the slate mailer.*

22 (f) The total amount of disbursements made during the period
23 covered by the campaign statement to persons who have received
24 one hundred dollars (\$100) or more.

25 (g) The total amount of disbursements made during the period
26 covered by the campaign statement to persons who have received
27 less than one hundred dollars (\$100).

28 (h) For each person to whom a disbursement of one hundred
29 dollars (\$100) or more has been made during the period covered
30 by the campaign statement:

31 (1) His or her full name.

32 (2) His or her street address.

33 (3) The amount of each disbursement.

34 (4) A brief description of the consideration for which each
35 disbursement was made.

36 (5) The information required in paragraphs (1) to (4),
37 inclusive, for each person, if different from the payee, who has
38 provided consideration for a disbursement of five hundred dollars
39 (\$500) or more during the period covered by the campaign
40 statement.

(i) Cumulative disbursements, totaling one thousand dollars (\$1,000) or more, made directly or indirectly to any person listed in the slate mailer organization's statement of organization. For purposes of this subdivision, a disbursement is made indirectly to a person if it is intended for the benefit of or use by that person or a member of the person's immediate family, or if it is made to a business entity in which the person or member of the person's immediate family is a partner, shareholder, owner, director, trustee, officer, employee, consultant, or holds any position of management or in which the person or member of the person's immediate family has an investment of one thousand dollars (\$1,000) or more. This subdivision shall not apply to any disbursement made to a business entity whose securities are publicly traded.

(j) The full name, street address, and telephone number of the slate mailer organization and of the treasurer.

(k) Whenever a slate mailer organization also qualifies as a general purpose committee pursuant to Section 82027.5, the campaign report shall include, in addition to the information required by this section, the information required by Section 84211.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 4. The Legislature finds and declares that the provisions of this act further the purposes of the Political Reform Act of 1974 within the meaning of subdivision (a) of Section 81012 of the Government Code.

SEC. 5. The amendment of Section 82015 of the Government Code made by this act does not constitute a change in, but is declaratory of, existing law.

~~82048.4. (a) "Slate mailer organization" means, except as provided in subdivision (b), any person who, directly or indirectly, does all of the following:~~

1 ~~(1) Is involved in the production of one or more slate mailers~~
2 ~~and exercises control over the selection of the candidates and~~
3 ~~measures to be supported or opposed in the slate mailers.~~

4 ~~(2) Receives or is promised payments totaling five hundred~~
5 ~~dollars (\$500) or more in a calendar year for the production of~~
6 ~~one or more slate mailers.~~

7 ~~(b) Notwithstanding subdivision (a), a slate mailer~~
8 ~~organization shall not include any of the following:~~

9 ~~(1) A candidate or officeholder or a candidate's or~~
10 ~~officeholder's controlled committee.~~

11 ~~(2) An official committee of any political party.~~

12 ~~(3) A legislative caucus committee.~~

13 ~~(4) A committee primarily formed to support or oppose a~~
14 ~~candidate, officeholder, or ballot measure.~~

15 ~~(c) The production and distribution of slate mailers by a slate~~
16 ~~mailer organization shall not be considered making contributions~~
17 ~~or expenditures for purposes of subdivision (b) or (c) of Section~~
18 ~~82013 except that, for purposes of the duties of a committee~~
19 ~~pursuant to subdivision (a) of Section 82013 only, the production~~
20 ~~and distribution of a slate mailer shall be considered a~~
21 ~~contribution to the extent that the value to a candidate benefiting~~
22 ~~from the slate mailer exceeds the payment received from that~~
23 ~~candidate's controlled committees. If a slate mailer organization~~
24 ~~makes contributions or expenditures other than by producing or~~
25 ~~distributing slate mailers, and it reports those contributions and~~
26 ~~expenditures pursuant to Sections 84218 and 84219, no~~
27 ~~additional campaign reports shall be required of the slate mailer~~
28 ~~organization pursuant to Section 84200 or 84200.5.~~

29 ~~SEC. 2. Section 84203.4 is added to the Government Code, to~~
30 ~~read:~~

31 ~~84203.4. (a) A slate mailer organization that distributes at~~
32 ~~least one slate mailer containing communications benefiting a~~
33 ~~candidate for which full value is not received from the~~
34 ~~candidate's controlled committees shall notify the beneficiary in~~
35 ~~writing of the amount of the excess value provided, which shall~~
36 ~~be considered a contribution for purposes of the receiving~~
37 ~~committee's obligations under this title. The notice shall be~~
38 ~~received by the recipient within 24 hours of the time the slate~~
39 ~~mailer is distributed.~~

1 ~~(b) The commission shall adopt regulations that shall provide~~
2 ~~an algorithm for a slate mailer organization to determine the full~~
3 ~~value of a slate mailer communication benefiting a candidate.~~

4 ~~SEC. 3. No reimbursement is required by this act pursuant to~~
5 ~~Section 6 of Article XIII B of the California Constitution for~~
6 ~~certain costs that may be incurred by a local agency or school~~
7 ~~district because, in that regard, this act creates a new crime or~~
8 ~~infraction, eliminates a crime or infraction, or changes the~~
9 ~~penalty for a crime or infraction, within the meaning of Section~~
10 ~~17556 of the Government Code, or changes the definition of a~~
11 ~~crime within the meaning of Section 6 of Article XIII B of the~~
12 ~~California Constitution.~~

13 ~~However, if the Commission on State Mandates determines~~
14 ~~that this act contains other costs mandated by the state,~~
15 ~~reimbursement to local agencies and school districts for those~~
16 ~~costs shall be made pursuant to Part 7 (commencing with Section~~
17 ~~17500) of Division 4 of Title 2 of the Government Code.~~

18 ~~SEC. 4. The Legislature finds and declares that the~~
19 ~~provisions of this act further the purposes of the Political Reform~~
20 ~~Act of 1974 within the meaning of subdivision (a) of Section~~
21 ~~81012 of the Government Code.~~